The Solicitors' Journal

VOL. 91 — Saturday, September 20, 1947 — No. 36

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CURRENT TOPICS

The Profession in Scotland

SOME of the differences between the legal professions in Scotland and England were touched upon on 11th June at the hearing of the evidence given on behalf of the Faculty of Advocates and the Scottish Law Agents' Society before the Royal Commission on Justices of the Peace. Mr. JAMES WALKER, K.C., gave evidence on behalf of the former body. Most of the work of the administration of justice which is performed by magistrates in England is done in the burghs by the Bailie's Court, according to Mr. Walker, who added that he never met a member of the Bar who had appeared in a Justice of the Peace court. Mr. J. E. SHAW and Mr. JOHN SMITH, on behalf of the Scottish Law Agents' Society, explained that while in England law agents were a sort of law stationers, that was not so in Scotland, because law agents were now solicitors there by statute. Scotland never had attorneys. Mr. Walker had stated that a great number of affidavits used for court purposes had to be sworn in Scotland before a justice of the peace, a notary public, or some other magistrate. "A notary public is a solicitor and therefore you would have to pay him?" Mr. Walker was asked. "You would pay a notary public and you would get it free with a justice of the peace," Mr. Walker replied. Mr. Shaw did not think that it would throw a considerable expense on the public with regard to the payment of fees, as there would be a small fee payable to any professional person who gave the same service. That professional person, he agreed, would be a notary public. In certain of the affidavits, such as those for deceased persons' estates, no fee was chargeable by the notary. When they acted as commissioners of oaths for all English affidavits taken in Scotland there was a fixed charge of 2s. 6d. He also said that he would like to see the judicial work of justices of the peace performed by stipendiary magistrates, and that that would not mean the appointment of a great many in Scotland.

Land Agents and Contracts of Sale

THE Law Society has directed the attention of the Council of the Incorporated Society of Auctioneers to an undesirable practice which has been adopted on some occasions recently by agents acting for vendors. This consists of asking a prospective purchaser of property, before he has had any opportunity of consulting a legal adviser, to sign a contract for sale and purchase containing conditions (*a*) binding the purchaser to restrictions and stipulations to which the property is subject but of which no details are given; or (*b*) precluding the purchaser from investigating the title for the full period on which the law entitles him to insist. The vendor's agent, it is stated, ought not to commit his own client to a contract settled without expert advice given in the light of particular facts. The Council of the Incorporated Society of Auctioneers informs its members, in the September issue of the *Incorporated Auctioneers' Journal*, that on the grounds of equity and duty to the public, they would be well advised to avoid the use of set forms of contract and to refrain as far as possible from settling contracts for sale, which is properly the duty of the parties' solicitors. It is, indeed, a common vice of human thought to infer that a formula, whether it is in a medical prescription or a legal phrase, which has been found valuable on previous occasions, will continue to apply in all circumstances of an analogous kind. As doctors warn their patients against the ready-made prescription of a patent medicine, so lawyers warn clients against the unassisted use of standard forms of wills, leases and other documents. The more irresponsible practice is for an agent, with the barest, if any, knowledge of the law of real property and conveyancing, to attempt to draw contracts, and it is good to learn that something is being done to bring the practice to an end.

The Driving Disqualification

THE Home Secretary on 6th September issued a circular to clerks to justices about cases where a driver who is driving a motor vehicle on behalf of his employer is charged under s. 35 of the Road Traffic Act, 1930, with the offence of driving without insurance (Circular 187/1947). The section provides that a person convicted of the offence of using on the road an uninsured vehicle shall be disqualified from holding a driving licence for twelve months from the date of conviction, unless the court for special reasons thinks fit to order otherwise. The circular states that the Home Secretary has no authority to determine a question of law, but in the light of recent judgments of the Divisional Court the Home Secretary is advised that where the justices are satisfied that in such a case the insurance of the vehicle was entirely the employer's responsibility and not a matter with which the employee could be expected to concern himself, and that the employee was driving his employer's vehicle in the ordinary course of his employment and did not know, and had no reason to suspect, that his employer had failed to insure the vehicle, it is open to the justices to find the existence of special reasons for directing that the employee shall not be disqualified from holding a driving licence in consequence of his conviction. In a recent case, the circular states, a Mr. Mizzen was driving his employer's vehicle which was not insured. The justices were satisfied that the conditions mentioned in the circular which has since been issued were fulfilled, but took the view that it was not open to them to find special reasons for not disqualifying. In the circumstances a free pardon has been granted to Mr. Mizzen on the recommendation of the Home Secretary. (See *ante*, p. 440, and cases there cited.)

New Company Registrations

We are indebted to Messrs. Jordan and Sons, Ltd., for some interesting statistics which they have published in an article by Mr. J. G. Hassell, F.C.I.S., concerning the course of company registrations for the years 1945, 1946, and the half-year ended 30th June, 1947, in continuation of the series of statistics published by them before the war. Owing to the paper shortage the article is less detailed than usual, but it still contains a wealth of information, from which the writer draws some important conclusions. During 1945, he states, reconstruction was the keynote; the Government wisely continued the control of capital issues, but the growth of new companies was back to 1939 level. The figure of 24,002 new companies registered during 1946, the article states, proved to be the greatest total of new companies incorporated in any one year since the commencement of company registration on 1st November, 1844. The writer describes the year 1946 as one of most vigorous enterprise, when the ex-serviceman and the formerly directed employee re-established themselves. The average capital per company was £5,304, and for private companies alone it was £4,830. The classifications showed that the highest percentage of companies was formed by builders (10 per cent.) and engineers (9 per cent.); food, clothing, and merchants each formed about 7 per cent. of the new companies, and motors accounted for 5·5 per cent. For the half-year January to June, 1947, the number of new companies was 11,320, indicating the same phenomenal enterprise, despite the coal crisis. On 31st December, 1946, the total number of companies on the register was 213,915, of which 13,172 were public companies, with a paid-up capital of £4,078,000,000, and 200,743 were private companies, with a paid-up capital of £1,923,000,000.

Interest on Funds in County Courts

From the 1st January, 1948, under the County Court Funds Rules, 1947 (S.R. & O., 1947, No. 1849), any funds in county courts standing to the credit of an "investment account"—on which interest has hitherto been payable at 3 per cent.—will be transferred to "deposit account" and accordingly will thereafter be credited with interest at 2½ per cent. As from that date investment accounts are to be abolished and the new rules make the necessary amendments to the County Court Funds Rules, 1934.

Restrictions on Banquets

Whether or not the new order which came into force on 14th September restricting the size and number of public banquets will achieve the object of economy in food consumption at which it aims may be debatable. It was said on behalf of the Hotels and Restaurants Association: "People are certain to have their meal even if they do not have it all together at the same time," and it is doubtful whether they tend to eat more in public than privately. What the order certainly does achieve is to add yet another to the list of restrictions which, though simple in themselves, yet necessitate the passing of legal provisions which are not outstandingly simple. The order provides that normally not more than 100 persons may be served with a meal at a social function. A licence must be applied for where it is considered necessary to provide a public meal for more than 100 persons and application must be made either direct to the appropriate divisional food officer or through a local food office. The organiser must apply by letter giving the name of the organisation, the person responsible for the arrangements, the name of the caterer, the time and place of the function, and the numbers involved. Licences, the Ministry of Food have announced, will be given for a limited number of people for functions at which a reasonable proportion of overseas visitors will be present, particularly where the promotion of export trade is involved. Applications will also be favourably considered for international conferences. In order to avoid undue interference with engagements already made the Ministry have announced that they are prepared to consider favourably applications for licences for functions for over 100 persons to take place before 31st October which were ordered before 1st September, 1947. It is to be hoped that the Government's power with regard to banquets already ordered will be exercised with wisdom so as to prevent the crop of litigation which may result from a frustration of existing orders (see *Bailey* v. *de Crespigny* (1869), L.R. 4 Q.B. 980, and the Law Reform (Frustrated Contracts) Act, 1943).

Price-Fixing Associations

One of the oldest complaints against trusts and quasi-monopolies is that they aim by deliberate policy to maintain prices at a high level. In this country the courts have never taken the view that this is a bad thing, but have even gone so far as to hold it to be a proper protection of legitimate trade interests to demand money for abstention from publishing in a black list the name of a person found guilty by a price-fixing association of infringing an agreement for maintaining prices (*Thorne* v. *Motor Trade Association* [1937] A.C. 797). Agreements for the maintenance of prices have been held valid and enforceable *inter partes* (*Palmolive Co.* v. *Freedman* [1928] Ch. 264). Probably this is because there has not been such a degree of abuse of power on the part of price-fixing associations in this country as there has been in the U.S.A. It is also realised here that wages and prices are closely linked, and price-fixing machinery is essential in order to maintain stability in the relation between wages and prices. Owing to abuses of such power in the U.S.A. anti-trust laws were passed, but for some years they have not been invoked in any litigation of importance. An interesting case has now begun, for on 26th August the grand jury in Washington indicted the National Association of Real Estate Boards and the Washington Real Estate Board on a charge of fixing commission rates in violation of the Sherman Anti-trust Act. It seems possible that one of the answers will be that if a charge of this kind is upheld other professional associations will not be immune from attack, but it appears that other charges are to follow connected with the fixing of prices for petrol and the monopolistic ownership of filling stations.

International Law

According to reports from Prague the main subjects dealt with at the conference of the International Law Association, which ended there on 6th September, were concerned with individual human rights and matters of private international law. The conference was in full agreement on the draft convention unifying the practice of various States with regard to divorce law, which it decided to recommend to governments for study and legal action under the Prague convention. On the more important subject of human rights generally the conference found it difficult to reach immediate agreement, but had to form a committee to study the question. It did, however, record its opinion that submission of an international bill of the rights of man to the General Assembly of the United Nations should be preceded by adequate study by non-governmental organs, as well as those of the United Nations, which should be completed by 1950 at the latest. The conference apparently did not consider this an unduly long period for deliberation. While paying proper tribute to the pioneer work which has been sincerely contributed by members of the conference, one cannot help feeling pessimistic about delaying resolution or action on human rights at a time when political intolerance and racial persecution still exist on a large scale and are even dangerously on the increase. By its charter the United Nations organisation is bound to promote respect for human rights, and machinery was set up at Dumbarton Oaks to achieve this. This machinery has so far only had effect within the United Nations organisation and purely as an educational influence. While it cannot be expected that a complete system of effective law can be accepted and put into effect at once by all the governments of the world, it may be thought that there are some simple necessities of life, seriously endangered still, which call for immediate if limited action. An international convention binding its signatories to non-discrimination as to sex, creed, race or language should not be considered an excessively lofty target. The measure of our desire to achieve it will be our promptness or otherwise in taking steps towards that end.

CRIMINAL LAW AND PRACTICE

THE OATH

A CORRESPONDENT has written, with regard to my short article on "The Oath" published in THE SOLICITORS' JOURNAL for the 26th July:

"I have always been of the opinion that the short form of oath laid down for witnesses by the judges of the King's Bench Division on the 11th January, 1927, is the form to be used in all cases whether civil or criminal. At some courts of quarter sessions, however, the following form of oath is used:—

'I swear by Almighty God that the evidence I shall give to the court and jury sworn between our Sovereign Lord the King and the Prisoner at the Bar shall be the truth, the whole truth and nothing but the truth.'

I shall be interested, therefore, to have your observations on the use of this particular form of oath.

Another point which interests me is the method of swearing the jury. In cases of felony each juror is sworn separately, whereas on a trial for misdemeanour the jury are sworn in groups of three and four. I have always been of the opinion that since the Oaths Act, 1909, the words should be repeated aloud by each juror, the underlying principle being that the fact of a person orally pronouncing the words himself renders the formality more dignified and impressive, although it occupies considerably more time. I find, however, that the almost universal practice at sessions (I am a little doubtful about assizes) is for the words of the oath to be said to the members of the jury in the following form:—

Felony

'You shall well and truly try the several issues joined between our Sovereign Lord the King and the Prisoner at the Bar whom you shall have in charge and a true verdict give according to the evidence. So help you God.'

Misdemeanour

'You shall well and truly try the several issues joined between our Sovereign Lord the King and the Defendant and a true verdict give according to the evidence. So help you God'."

The answer to the first part of the question is to be found in s. 2 of the Oaths Act, 1909. Section 2 (1) prescribes the form and manner of "any oath," but uses permissive words: "Any oath may be . . . etc."

The only words prescribed by the subsection are: "I swear by Almighty God that . . ."

Section 2 (2) uses mandatory words: "The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question." The effect of the section, as Lord Alverstone, L.C.J., pointed out in *R.* v. *Palm* (1910), 4 Cr. App. Rep. 201, is "not to declare the old form of oath is illegal." It says that persons shall not be sworn in the old way unless they voluntarily ask to be so sworn.

So far as the Oaths Act, 1909, is concerned, therefore, it is clear that the form of oath commonly administered to witnesses in quarter sessions is unobjectionable.

The resolution of the judges on 11th January, 1927, laid down a form of oath for witnesses in all courts over which the King's Bench judges preside, whether such courts are civil or criminal.

The object of doing so was to secure uniformity and to preserve the impressiveness of the oath at the same time.

The approved form is that which is now almost universal, except for some courts of quarter sessions, as our correspondent states.

The answer therefore to the first part of the question is that the form of oath in use at some quarter sessions is unobjectionable in law, but undesirable in practice.

The two forms of oath in use for jurors in the trial of felonies and misdemeanours respectively are objectionable in law only to the extent that they appear to infringe the Oaths Act, 1909, s. 1 (2). The objection hardly goes to validity and as to the difference between the two forms of oath for felonies and misdemeanours respectively, that is time-honoured, but the use of the oath for felonies in the case of misdemeanours does not invalidate a trial (*R.* v. *Turner* [1910] 1 K.B. 346; 54 SOL. J. 164). There seems to be no objection to them in practice on the score either of uniformity or impressiveness.

Swearing no more than one juror at a time is clearly more impressive than swearing four at a time, or even, as in some cases, twelve or the corresponding maximum number at a time. The little extra time that the swearing takes is gained and not lost. I agree with my correspondent that swearing more than one juror at a time is an undesirable, though not uncommon, practice, on the trial of misdemeanours.

COMPANY LAW AND PRACTICE

FINANCE ACT, 1947—III

AFTER a great deal of discussion we have finished with the general nature of the charge on an issue or variation of rights by way of bonus, but the way in which the value of a bonus falls to be ascertained in the case of an issue has not yet been fully dealt with. Last week it was pointed out that that value was the result of subtracting from the value of the securities issued the consideration received by the company for the issue, and the provisions for valuing the securities were noticed. Substantially they are intended to value the securities in the case of a public company at their market value, and it was pointed out that there were three different methods provided for different cases of arriving at that value.

There is in the proviso to s. 61 (3), a verbally extremely complicated provision dealing with the case of a class of securities to different blocks of which different methods would apply, but the company gets the same consideration for all the securities of that class. In effect the subsection provides that you value the securities in the first block to which any of the valuation provisions apply and then take as the value of the whole class the value which you would have worked out had all the securities fallen to be valued at the same time and by the same method as the first block.

It should be noted, however, that this method will not apply where the company gets different consideration in respect of the different blocks of securities even when the securities themselves are all of one class.

This disposes of the question of valuing the securities. There remains the question of valuing the "consideration received or receivable by the company." The Act deals with "the aggregate amount or value" of this consideration and consequently contemplates cases where the consideration is not given in cash, but no rules are laid down for valuing any consideration not given in cash.

The only rules as to ascertaining the amount of the consideration for the purpose of working out the equation is that two things are to be disregarded in ascertaining the amount or value of the consideration. The first is any retention by the company issuing the securities, by way of set-off or otherwise, of any sums or property distributable among the persons to whom the issue is made. The effect of this provision seems to be as follows: Suppose a company declares a dividend, for example, to its ordinary shareholders, those dividends are sums distributable among the ordinary shareholders. If the company then issues new shares to the ordinary shareholders and gives them the option of paying up those shares by applying the amounts they are entitled to by way of dividend, those amounts if so applied are not to be taken for

the purposes of the equation as consideration received by the company.

In other words it is this provision which really catches the operation which was hitherto generally known as making an issue of bonus shares, and apart from this the Act is merely dealing with issues in which certain advantages are given to certain classes of persons, a matter which has not hitherto been generally termed a bonus issue. Indeed, where a company's shares stand considerably above par and it issues further shares ranking *pari passu* with its existing shares, it has been looked upon rather in the nature of a right than a bonus that the existing shareholders should be allowed the first opportunity of subscribing for the new shares.

A similar provision is contained in s. 62, which provides that a variation of rights made wholly or partly in consideration of the retention by the company of sums or property distributable among its members or debenture-holders, is to be deemed to be one by way of bonus, the value being equivalent to the property retained, and this would apply in the same way where a company declared a dividend and then gave the persons entitled to that dividend the right to have the amount of it applied in paying up a liability on their shares.

The other matter which is to be disregarded in ascertaining the amount or value of the consideration received by the company is any prospective liability, whether contingent or not, attached to the securities or letters of right, " or treated as attached thereto in determining their value." I do not follow what is intended by these last words which I have quoted, but the effect of the provision appears to be that if the shares, for example, which are issued by way of bonus are not fully paid up you do not add the aggregate amount liable to be paid up on the shares to any other consideration received or receivable by the company, and indeed, such a provision is perfectly reasonable, for that liability will have already been allowed for in the market value of the shares.

The provisions mentioned above refer generally to the issue of securities, but subs. (5) of s. 61 contains an exception in the case of private companies, or rather in the case of securities of such companies other than redeemable preference shares and debentures which are either irredeemable or redeemable at varying prices. For these latter securities, the valuation will be apparently as in the case of estate duty, but in the case of other shares their value is to be taken as the nominal value and in the case of other debentures it is to be the redemption price. If shares within s. 61 (5) are not fully paid up, the amount payable to the company on the shares is in that case to be treated as consideration receivable by the company for the purpose of working out the value of the bonus.

Similar provisions as to ascertaining the value of the bonus apply where a sale is deemed to be an issue by way of bonus in accordance with the provisions referred to last week. Section 61 also contains provisions as to the time for and contents of the statement which has to be delivered relating to a bonus.

A CONVEYANCER'S DIARY

FINANCE ACT, 1947—II

PART V of the Act, which deals with death duties, is inevitably more complicated than the sections considered last week relating to stamp duties. This is in the settled tradition of all legislation on death duties, and I cannot forbear to complain once again of the unnecessary complexity of this branch of the law and to stress the urgent need for some measure of consolidation. It is only the unstinted efforts of the profession which prevent the present system of charging and collecting these duties from breaking down completely, and it is time that some attention should be paid to the repeated plaints of those who have to chart their way through the tortuous maze of references and cross-references that make up the law on death duties.

The Act of 1947 makes no change either in the rate or the incidence of estate duty, and the present changes affect only legacy duty and succession duty. In this respect two very important changes are introduced: on the one hand the duty previously chargeable on legacies and successions is, with certain exceptions, doubled, and on the other hand a wide measure of exemption from these duties is conferred on legacies and successions of small amount. I propose to consider these changes under their appropriate headings.

Imposition of further legacy and succession duty

Section 49 (1) of the Act imposes on every legacy and succession already subject to duty under the existing law a *further* legacy or succession duty (as the case may be) at a rate equal to the duty already charged under the existing law. By proviso (*a*) to this subsection the further duty will not be charged on any legacy or succession given or created for public or charitable purposes; this provision is unlimited in extent, and legacies and successions of this nature will, therefore, continue to be charged only with the duty to which they are already subject apart from the Act of 1947, whatever their value and at whatever date they may be, or may have been, given or created. By proviso (*b*) the further duty will not generally be charged on any legacy derived from a testator or intestate dying before 16th April, 1947, or on any succession arising before that date. There are, however, exceptions to this general rule to which I shall refer later. The effect of s. 49 (1) is therefore clear: in the ordinary case the existing rates of legacy and succession duty will be doubled, but as certain cases will occur where either the duties under the existing law or the further duty imposed by the Act of 1947 will alone be payable, it is necessary to differentiate between what, for convenience, may be called the old duty and the further duty.

Section 49 (2) provides that further duty shall be charged on any legacy derived from a testator or intestate dying before 16th April, 1947, and on any succession arising before that date, in three separate cases. The meaning of "arising" for this purpose will be explained later. Each of these three cases rests on the assumption that legacy or succession duty under the existing law either is, or would in certain hypothetical circumstances be, payable on such legacy or succession in connection with a variety of events, happening on or after 16th April, 1947, which are set out *seriatim* in s. 49 (3) of the Act. These events will require detailed comment, but, for the purposes of illustrating the effect of the charge of further duty on a legacy derived from a testator or intestate dying before 16th April, 1947, or a succession arising before that date, I will select the first of the events tabled in s. 49 (3), viz., the death of any person on or after 16th April, 1947. With the reminder that the comments and illustrations which follow are not, therefore, exhaustive, two of the three cases in which further duty will be charged notwithstanding that the legacy is derived from a testator or intestate dying before 16th April, 1947, or the succession arises before that date, are as follows (the third case must be deferred until next week):—

(1) The further duty will be charged if and to the extent to which duty under the existing law is already payable in connection with the death of any person on or after 16th April, 1947: s. 49 (2) (*a*). The effect of this provision is merely to double the duty which, apart from the Act of 1947, is already payable. For example, if a testator T, who died in 1945, gave a legacy of £20,000 to his son A for life and after the death of A to a stranger X, and A dies on or after 16th April, 1947, the benefit that accrues to X on the death of A will be charged with duty at 20 per cent. This duty will be made up as to 10 per cent. under the existing law and as to the other 10 per cent. by way of further duty under the Act of 1947.

(2) The further duty will be charged if and to the extent to which duty under the existing law would have been

payable on such legacy or succession in connection with the death of any person on or after 16th April, 1947, *if the provisions applicable in cases where all persons having successive interests are chargeable with the same rate of duty were the same as those applicable where they are chargeable with different rates of duty:* s. 49 (2) (*b*). Under this provision the further duty imposed by the Act of 1947 will alone be chargeable, i.e., the rate of the *total* duty payable under the Act of 1947 will be the rate appropriate under the existing law, but it will be payable on legacies and successions in cases where at present no duty is payable. For example, T, who dies in 1945, by his will gives a legacy of £20,000 to his son A for life, and after A's death to A's daughter B. Under the existing law legacy duty at 1 per cent. on the capital value of the legacy is charged on T's death, and since the rate applicable to A and B is the same, no additional duty is payable on A's death. As regards the duty chargeable under the existing law the position is unchanged, but on A's death on or after 16th April, 1947, the further duty will, under this provision, become payable, i.e., the benefit accruing to B on A's death will be charged with duty at 1 per cent., being the extent to which duty would have been payable on A's death but for the existing provisions exempting the legacy from any additional payment of duty in the case where successive interests in the same benefit are chargeable with duty at the same rate.

The imposition of further duty in these cases is bound to lead to difficulties in cases where a testator dying before 16th April, 1947, made express provision for payment of legacy or succession duty, and a sum sufficient to meet liabilities in this respect under the law existing at the time of his death only has been set aside. I hope to be able to return to this problem at some future time.

LANDLORD AND TENANT NOTEBOOK

INCREASING RENT OF COMBINED PREMISES

CORRESPONDENTS have drawn my attention to the following problem, one which arises fairly frequently in practice. The tenancy of controlled premises, consisting of living accommodation and business accommodation, expires; both landlord and tenant are willing to agree to a new tenancy at a higher rent; how can this object be lawfully attained? I am told that some practitioners refuse to consider the grant of a new lease; others close their eyes to the difficulty and prepare new agreements at the increased rent; while a third section deal with it by separating the business part from the dwelling, and letting the two by different instruments.

Before discussing the merits of these suggestions and reactions, perhaps I should say something about the question (which may occur to those who have to tackle plenty of problems other than Rent Act problems) why a tenant who is entitled to retain possession at the same rent should be willing to pay more. The answer is that, apart from the incident of assignability, a contractual tenant has a number of advantages over a statutory tenant; and I think the point can be convincingly illustrated by referring to such an authority as *Middlesex County Council* v. *Hall* [1929] 2 K.B. 110. The defendant in that case had for many years carried on a teashop in the premises claimed, which consisted of a large cottage, possibly two cottages thrown together; and no doubt he thought that the Rent Acts would enable him to live in and make a livelihood from the premises indefinitely. But in 1925 the plaintiffs bought the property for the purpose of road-widening, and when they found and offered him alternative accommodation which was admittedly suitable so far as user as a dwelling-house was concerned, but not suitable for the purposes of his business, they brought their action. The county court judge decided against them, but the Divisional Court allowed the appeal. True, the requirements of suitable alternative accommodation, as set out in para. (*d*) of subs. (1) of s. 5 of the 1920 Act, included "as regards proximity to place of work" (see now the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (3)), but, as Talbot, J., said, when discussing a decision under an earlier Act (*Wilcock* v. *Booth* (1920), 89 L.J.K.B. 864): "the court, having regard to the scope and object of the Act, which protected *dwelling-houses only*, considered that the words 'alternative accommodation available for the tenant' must be confined to accommodation for the purposes of habitation"; the language of the enactment in force when that case was decided was in fact more favourable to the tenant, being on the face of it unlimited, and there was nothing in the later Act which suggested consideration of the suitability of the alternative premises for a business carried on by the tenant on the old premises. This demonstrates very cogently that a tenant of combined premises should consider a proposal of a new lease at a higher rent an attractive one in principle.

Coming now to the suggested methods, I have no hesitation in condemning that of ignoring the Acts and granting a new lease of the whole property, and none in commending that of granting separate leases.

There is, of course, ample authority, from *Epsom Grand Stand Association* v. *Clarke* (1919), 63 SOL. J. 642 (C.A.), to *Vickery* v. *Martin* [1944] K.B. 769 (C.A.), to show that combined living and business accommodation is controlled, and ignoring this fact would mean that the tenant (which expression includes his assigns) could at any moment withhold excess rent and recover excess rent paid. Such a proceeding would not even convert him into a statutory tenant (*Fumasoli* v. *Comyn and Fish* (1924), 132 L.T. 490).

Presumably the apprehensiveness about the other method is based on fear that the tenant might impugn the transactions as an attempt to evade the Acts. But there is no justification for this fear. The Acts, as has been judicially observed, are for the protection of tenants and not for the penalising of landlords; there is nothing in them to prevent a tenant from giving up his right to protection, whether he be a contractual or a statutory tenant. The protection machinery is essentially procedural: the Acts place the fetter upon the action of the court, not upon that of the landlord (*Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.)). In the case of a statutory tenancy, the landlord might, *ex abundanti cautela*, insist that the tenant should move out for a day or two before the new tenancies commenced; but my opinion is that the entering into the two new agreements would be ample evidence that possession was not referable to the protection of the Acts.

Of course, the living accommodation must be let at the permitted amount of rent, which would be less than the old rent of the whole property and which might have to be ascertained by apportionment. That it can be ascertained by apportionment is clearly implied by such a decision as that in *Barrell* v. *Fordree* [1932] A.C. 676: in that case a landlord was held entitled to recover that part of premises which had been sub-let furnished; it had been urged that this would mean that the tenant would be liable for the same rent for smaller premises, or else for no rent at all; but at the conclusion of his speech Lord Warrington said: "I see no difficulty in making a proper apportionment of the rent as between the rooms retained by the appellant and those recovered by the respondent. Section 12, subs. (3), of the Act of 1920 gives ample powers for that purpose." And any doubt whether apportionment can be made between business premises and residential premises in order to ascertain the permitted rent of the latter was resolved by *Barrett* v. *Hardy Bros. (Alnwick), Ltd.* [1925] 2 K.B. 220 (C.A.). Lastly, I would remind those concerned that, if a rent-book is used for the residential premises, the requirement that the standard rent must be stated can be satisfied, pending apportionment, by an entry to the effect that the rent is provisional and that the correct figure will be inserted when determined (*Austin* v. *Greengrass* [1944] K.B. 399).

TO-DAY AND YESTERDAY

LOOKING BACK

THE following story from a letter in the Portledge Papers needs no comment. On 13th September, 1691, " was executed at Tiburne the Grayes Inn gent that murdered his wife : he was caryed in a coach and Dr. Wake the Minister of Grayes Inn went with him. Hee confest the fact and dyed very penitent though hee denyed it at his tryall. His corps were brought back and buryed in our church St. Andrews Holborn." The woman's body had been found in July in a ditch near Kensington and this was the story : " Here hath bin lately acted a very sad Tragedy by a young gent of Grayes Inn viz. one Mr. Bird who was a student there and lived in his fathers chamber. His father was bred an Attorney in the North Cuntry and called lately to the bar in his old age. Hee had gotten a great estate but many children, was very fond of this his eldest and took much care to breed him up so that hee might be eminent in his calling and to marry him so as to have a portion that might contribute to the advancement of the younger children. The young man came not long since from the University of Oxford where it seems unknown to his father hee marryed the Butlers daughter of the Colledge. She came lately to town big with child and lodged near Hyde Park. This match being discovered to the father made him outragious in anger towards his son and all love turned into the greatest hatred which took so much impression, as is supposed, on the sonn that on Fryday was sevenight in the Evening hee wrote a Letter to her to meet him in some feild neere Hyde Park : where being met she was murdered by having her throat cutt by him. His letter to invite her there being found in her pocket and nothing taken from her nether rings cloaths nor money, her husband was fourthwith apprehended who had newly changed his cloaths but his hands cutt and bloody. He was committed to New Gate."

ON EDINBURGH

THOUGH the Englishmen must be few who do not permit themselves romantic thoughts of Edinburgh, the festival and exhibition there have brought the Athens of the North more than usually into the consciousness of Southerners. An article by Eric Linklater which appeared in a Sunday paper captured the contrasts of the city's tradition and history, Grecian and Gothic, mannered elegance and ruthless savagery. In his picture, however, the law emerges a ruder figure than a just estimate would warrant. Of the judges of the Parliament House Lord Braxfield alone is chosen as the representative—the tough reactionary Braxfield who once declared of political reformers that they would " a' be the better o' being hangit." Of criminal proceedings all we are shown is the murderous execution of the great and noble Montrose and the terrible figure of Major Weir, the sinister Covenanter, who commanded the Town Guard on that occasion and, after a life of much honour among the " saints " of the West Bow, was at last himself executed, a self-confessed warlock and dealer with the devil. The only other legal figure presented to us is that Mr. Colquhoun Grant, afterwards a writer to the signet, who, having risen for Prince Charlie in the '45, captured two guns at Prestonpans and then single-handed chased a party of English dragoons to the very gates of Edinburgh Castle, his sword and his clothes all bloodstained.

THE JUDGES' CONTRIBUTION

Now, were this all, the lawyers of Scotland would bring but an irrelevant inheritance to the festival with which Edinburgh is shining forth in a darkened world and it would be a pity to leave it at that, especially as Sir John Falconer, the Lord Provost, to whose practical interest in the arts the festival owes so much, is himself a writer to the signet. The contribution of the lawyers of Edinburgh to the stream of Scottish culture has been steady and continuous. Whether within or without the legal world the figure of Sir Walter Scott is beyond overlooking and he, incidentally, would have ridden as gallantly as Mr. Colquhoun Grant had the Napoleonic invasion, the threat of which turned him into a passionately enthusiastic cavalryman, matured in action. Then can Edinburgh ever forget Lord Cockburn, who did so much, but not nearly as much as he would have wished, to preserve the character and the beauty of the city from the ravages of nineteenth century industrial utilitarianism ? A century beyond his day his influence in this respect is still felt in our own time. Again, can Edinburgh forget Lord Jeffrey, eminent alike in literature and law but especially the former, since to him especially the *Edinburgh Review* owed its beginnings ? Later on, to choose another random name, there is Lord Neaves, scholar and satirist and writer of the liveliest of light verse. No, if Braxfield represented the strong element of " Gothic " which undoubtedly existed in the Scottish legal world, he must in justice be given a " Grecian " companion piece.

COUNTY COURT LETTER

The Definition of a Nuisance

IN *Piliso* v. *Harding and Wife*, at Birmingham County Court, the claim was for possession of an unfurnished flat. The counter-claim was for damages for breach of an implied undertaking for quiet enjoyment, damages for assault on the female defendant and for an injunction to restrain the plaintiff from acting so as to prevent the defendants' quiet enjoyment of their tenancy. The plaintiff was a doctor, and his case was that the defendants had interfered with his housekeeper, in the course of her duties, and had prejudiced his practice. The defendants' case was that the plaintiff had wrongfully and maliciously conspired with his housekeeper and other tenants to cause injury to the defendants and to force them to give up their tenancy. His Honour Deputy Judge A. R. Churchill accepted the evidence of three independent witnesses and held that there had been conduct by the defendants which was a nuisance and annoyance to other occupiers of the house. There was no evidence of conspiracy and the counter-claim was dismissed. An order was made for possession in two months, but (as the conduct of the plaintiff's housekeeper was a partial source of the trouble) without costs.

IN *Pitcher* v. *Murphy*, at Walsall County Court, the claim was for possession of a flat over a shop. The plaintiff was the owner of a machine tool business, carried on in the shop, and her case was that ten years ago she let the flat to the defendant, who was now in the Army. In recent years the defendant's wife had turned on the radio at 8.30 a.m. each day and kept it going loudly. She also sang loudly herself and had encouraged her children to be noisy. On New Year's Day the plaintiff turned the water off to avoid a burst pipe during the frost and the defendant's wife became aggressive. The defence was a denial of the allegations. The water was turned off for two days and four children could not have baths. The plaintiff gave notice to quit because she wanted the flat for store rooms. His Honour Judge Norris gave judgment for the defendant, with costs.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88–90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Sharing a house

Q. Twelve months ago A purchased a dwelling-house subject to the Rent Act, with the tenant B in possession, who still retains possession. A and his wife, who urgently require accommodation, know that the accommodation in the house is adequate for and is used by B and his family and also two lodgers. A proposes to B that two rooms at the top of the house should be converted to a self-contained dwelling and that A should occupy these with his wife. A has no children, B has three. We are aware of the case of *Thompson* v. *Rolls* [1926] 2 K.B. 426, where it was held that five rooms in a seven-roomed house constituted sufficient alternative accommodation, although no reference was made to security of tenure. Assuming that the rooms offered to B in this case can be shown to constitute a separate dwelling, in view of *Neale* v. *Del Soto* [1945] K.B. 144, is it your opinion that the county court judge has jurisdiction to order possession of the rooms claimed by A ? Is it the practice of county court judges to follow the decision in *Thompson* v. *Rolls* ? There is one difference in this case from that of *Thompson* v. *Rolls*, in that B will in fact be giving up a fairly large room and taking in its place a considerably smaller room. In practice, is an order granted for possession of the whole house, on condition that the landlord grants a sub-tenancy of the alternative accommodation to the tenant ?

A. The county court judge has jurisdiction to order possession of the rooms claimed by A, but the present practice is not to make an order for part-possession—or only in exceptional cases. The last question is answered in the negative—with the reservation that such an order may be granted in an exceptional case. On the facts set out in the query it is doubtful whether an order would be made.

NOTES OF CASES

HOUSE OF LORDS

Winter Garden Theatre (London), Ltd. *v.* Millenium Productions, Ltd.

Viscount Simon, Lord Porter, Lord Simonds, Lord Uthwatt and Lord MacDermott. 28th July, 1947

Licence—Licence for occupation of a theatre—Not expressly revocable by licensors—Whether so revocable—Observations on inherent revocability of licences—Sufficiency of notice.

Appeal from a decision of the Court of Appeal, reversing a decision of Roxburgh, J.

By an agreement contained in letters dated 10th June, 1942, the appellants granted a licence to the respondents to use the Winter Garden Theatre, the material terms being as follows: (1) Licence should run for six months from 6th July, 1942, at a weekly 'rent' of £80; (2) at the expiration of six months licensees should have option of continuing for a further six months at a 'rental' of £100 to £200, depending on the takings; (3) at the expiration of the second six months licensees to have the option of further continuing the licence at a 'rental' of £300 per week; (4) licensees were to give six weeks' notice of their intention to continue the licences under (2) and (3) above; (5) licensees were not to grant sub-licences without the consent of the licensors, which was not to be unreasonably withheld; (6) licensees might terminate the licence at one month's notice.

The respondents exercised their options. The appellants on 11th September, 1945, gave the respondents notice to vacate the theatre on 13th October, 1945, but offered to make some reasonable postponement of the date if the first date was not convenient. The respondents maintained that the licence was not revocable by the appellants, and did not indicate a convenient date. On 22nd August, 1945, the respondents had entered into an agreement with a third party, L. D., Ltd., which was subsequently held to constitute a breach of the agreement not to grant a sub-licence.

The respondents claimed that the licence was not revocable by the appellants except on breach by the respondents of its terms; alternatively, if the licence was revocable, such revocation did not become effective until after the lapse of reasonable time, and such time had not elapsed. The appellants contended that the licence was revocable by notice and that a reasonable notice had been given.

ROXBURGH, J., gave judgment for the appellants, which judgment was reversed by the Court of Appeal.

VISCOUNT SIMON, after referring to *Hurst* v. *Picture Theatres, Ltd.* [1915] 1 K.B. 1, with approval, and stating that *Wood* v. *Leadbitter* (1845), 13 M. & W. 838, could no longer be considered as law, in view of the fusion of law and equity and as it was decided on a technical point of pleading now obsolete, said that he adopted the opinion of Lord MacDermott.

LORD PORTER said that the Court of Appeal had held that the licence must be construed in the light of its own terms, with no leaning towards revocability or irrevocability. But few, if any, types of contract could properly be construed without taking into account the background of general development and the implication of customary provisions. The law of licences had a long history, and the whole historical development was against the contention that a licence, once given in general terms, could never be terminated; the decisions in *Cornish* v. *Stubbs* (1870), L.R. 5 C.P. 334, *Mellor* v. *Watkins* (1874), L.R. 9 Q.B. 400, *Kerrison* v. *Smith* [1897] 2 Q.B. 445, *Wilson* v. *Tavener* [1901] 1 Ch. 578, *Canadian Pacific Ry. Co.* v. *R.* [1931] A.C. 414, *Minister of Health* v. *Bellotti* [1944] K.B. 298, were against such a contention, and *Hurst's* case, *supra*, was not antagonistic. The respondents had relied on *Llanelly Ry. & Docks Co.* v. *L.N.W. Ry. Co.* (1875), L.R. 7 H.L. 550, but that was a special case involving railway running powers, and the decision was based on the document in suit. *Prima facie*, licences were revocable; the document in suit, if it had been a tenancy agreement, would be interpreted as requiring no more than reasonable notice for its termination. A licence is *prima facie* terminable at once after notice to terminate has been given, but a licensee must be given a reasonable time to vacate the premises, the time depending on the circumstances of the case. The respondents could not rely on their contract with L. D., Ltd., in support of their contention that the length of notice was unreasonable, as that contract amounted to a sub-licence and was in breach of the main contract. The appeal should be allowed.

LORD UTHWATT said that a right to continue, without more, meant a right to continue for a period which was left at large. The respondents' contention would mean that a stipulation must be implied that the licensors would not revoke the licence, and the question whether such a term could be implied depended purely on the construction of the contract. On looking at the language of the contract, such an implication could only be made by stressing the contrast between the express power to determine given to the licensees, and the absence of any such power in favour of the licensors. He did not consider that such a term could be implied. The notice given must be a reasonable notice; what was reasonable could be determined only by the nature of the user of the theatre authorised by the licence, and the licensors were entitled to obtain from the licensees such information as was necessary to enable them to form an opinion as to the proper length of a reasonable notice (see *Mackay* v. *Dick* (1881), 6 App. Cas. 251). Under the circumstances the licensees were not entitled to demand time for the fulfilment of their bargain with L. D., Ltd.

LORD MACDERMOTT (whose opinion was adopted by LORD SIMONDS also) said that in the *Llanelly Dock* case, *supra*, the facts showed that it was plain that the contract for running powers was perpetual; there was nothing in common between that case and the present except the absence of an express provision for termination by the licensors. The provisions of the contract in suit negatived the notion that the permission of the appellants was perpetual. As regards notice, one who remained on the land of another after his licence to use it had terminated could not be considered as a trespasser before he had a reasonable time to vacate. The period of grace could be the subject of agreement, but in general should be ascribed to a rule of law rather than to an implied stipulation; its object was not to prolong the user sanctioned, but to enable the licensee to adapt his arrangements to the new circumstances. In the present case he agreed that the agreement of the respondents with L. D., Ltd., was a breach of the licence agreement. He concurred that the appeal should be allowed.

COUNSEL: *Sir Valentine Holmes*, K.C., and *Roche*; *Beyfus*, K.C., and *Albery*.

SOLICITORS: *Richards, Butler & Co.*; *Herbert Oppenheimer, Nathan and Vandyk*.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF APPEAL

Munro *v.* Daw

Tucker, Somervell and Evershed, L.JJ. 18th July, 1947

Landlord and tenant—Rent restriction—Premises let in consequence of tenant's employment by landlord—Whether mere fact of or nature of employment material—Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 & 24 Geo. 5, c. 32), s. 3, Sched. I, para. (g) (i).

Appeal from a decision of Judge Carey Evans given at King's Lynn County Court.

The plaintiff landlord, a house agent, in 1944 bought a house, to which the Rent Restriction Acts applied, for his managing clerk. That managing clerk had left his service in the summer of 1945, and in September, 1945, the landlord let the house to the tenant who had been in his employment as a domestic help since April, and from June or July, 1945, had also been employed by him as an office cleaner. She ceased to be in his employment in December, 1946. Requiring possession of the house for his new managing clerk, the landlord claimed possession under s. 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. By s. 3 (1): "No order . . . for . . . possession of any dwelling-house to which the principal Acts apply . . . shall be made . . . unless the court considers it reasonable . . . and . . . has power . . . under the . . . First Schedule to this Act . . ." By that Schedule: "A court shall . . . have power to make . . . an order . . . for . . . possession of any dwelling-house to which the principal Acts apply . . . without proof of suitable alternative accommodation . . . if . . . (*g*) the dwelling-house is reasonably required by the landlord for occupation as a residence for some person engaged in his whole-time employment . . . and . . . (i) the tenant was in the employment of the landlord . . . and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment." The county court judge made an order for possession and the tenant now appealed.

TUCKER, L.J., said that the county court judge had found as facts that it was reasonable to make the order for possession, that the house was reasonably required by the landlord for occupation as a residence for some person engaged in his whole-time employment, that the tenant was in the employment of the landlord, that the house was let to her in consequence of that employment, and that she had ceased to be in that employment. The only finding disputed was the finding that the house was

let to the tenant in consequence of that employment. It was argued that, while there was evidence on which the judge could come to the conclusion that the house was let to her in consequence of the fact that she was the landlord's servant, there was no evidence that it was let to her in consequence of the fact that she was employed by him as an office cleaner. The question, therefore, was whether the judge had properly interpreted the words "in consequence of that employment." In *Braithwaite & Co., Ltd.* v. *Elliott* [1947] K.B. 177; 90 SOL. J. 613, to which counsel for the tenant had referred, the point now raised was not taken and was not material, namely, that "employment" meant not the relationship of master and servant, but the nature of the particular employment for which the particular tenant was employed. He (his lordship) thought that the natural meaning of the words was that they referred to the relationship of employer and employed, and that there was nothing in the Schedule to suggest that what was intended was a requirement that the letting should be in consequence of the nature of the particular employment of the tenant. It would be straining the language to put such an interpretation on it. The judge had applied the proper test and, his finding being one of fact, there was no material on which the court could interfere. The appeal should be dismissed.

SOMERVELL and EVERSHED, L.JJ., agreed.

COUNSEL: *Southall; Ackner.*

SOLICITORS: *Pritchard, Sons, Partington & Holland,* for *Alan G. Hawkins & Co.,* King's Lynn; *Field, Roscoe & Co.,* for *Sadler, Lemmon & Gethin,* King's Lynn.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

Rollo and Another *v.* Minister of Town and Country Planning

Morris, J. 30th July, 1947

Town and country planning—Proposed new town—Conferences between Minister and local authorities concerned—"Consultation"—Minister's duty to give information—New Towns Act, 1946 (9 & 10 *Geo.* 6, *c.* 68), *s.* 1 (1).

Appeal under the New Towns Act, 1946.

On the 9th January, 1947, the Minister of Town and Country Planning made an order designating as the site of a proposed new town an area at Crawley, including parts of the areas of various local authorities. The order was challenged by the appellants, two residents of Crawley, on the grounds, so far as material, that it was not within the powers of the Act, and, alternatively, that requirements of the Act had, to the prejudice of the appellants, not been complied with. On the 25th June, 1946, the Minister wrote to the local authorities appearing to him to be concerned, stating that he was contemplating the development of a new town in the Crawley-Three Bridges area, and suggesting a meeting between himself and them. In consequence, on the 10th July, 1946, a meeting took place at the Ministry, the local authorities represented including ones in whose areas it was not then proposed to designate any land. On the 7th September, 1946, the Minister published a draft of the proposed order in compliance with para. 1 of Sched. I to the Act. In compliance with the direction in the same paragraph to publish "such statement as the Minister considers necessary for indicating the size and general character of the proposed new town," the Minister published with the draft order a statement only that it was intended that the proposed new town should, when fully developed, be self-contained in that accommodation would be provided for a total population of about 50,000, and that a proper balance would be maintained between industrial and residential development. On the 23rd September, at a meeting of representatives of the local authorities concerned, it was resolved to invite the Minister to send a representative to Crawley to explain to them the considerations which had influenced him in fixing the boundaries of the new town. On the 7th October, 1946, a meeting between the authorities and two officials of the Ministry took place in accordance with the invitation. On the 4th November, 1946, a public local inquiry was held. On the 19th, the inspector who held it presented his report, and on the 9th January, 1947, the final order was made. It was contended for the appellants that the statement given by the Minister with the draft order was inadequate, in particular, in not indicating the general character of the proposed new town, and that there had been no consultation between the Minister and the local authorities appearing to him to be concerned in compliance with s. 1 (1) of the Act, in that the meeting of the 10th July, being before publication of the draft order and before the passing of the Act, could not constitute such consultation, and was in any event merely a meeting at which a decision of the Minister was announced, "consultation" in the subsection being referable to selection of a site and not merely to consideration of a site already chosen. It was contended for the Minister, *inter alia,* that he need not consult any authority who had said that they were not interested in a proposal to designate a site, and that it was sufficient to constitute consultation, within the Act, with an authority, that they had stated their objections at the public local inquiry. By s. 1 (1) of the Act of 1946, "If the Minister is satisfied, after consultation with any local authorities who appear to him to be concerned, that it is expedient in the national interest . . . he may make an order designating" an "area as the site of the proposed new town." (*Cur. adv. vult.*)

MORRIS, J., said that the adequacy or otherwise of the statement published with the draft order was for the Minister and not for the court to decide, so long as he gave all the information that he honestly considered necessary for indicating the size and general character of the proposed new town. It was, therefore, irrelevant that the Minister had in fact given in that statement all the information that he possessed at the time. Paragraph 1 of Sched. I to the Act would not, however, be satisfied by the Minister's including in the statement all the information which he had if he did not also consider it sufficient to indicate the prescribed matters. The statement in question was adequate in that the information in it was all that the Minister had and honestly considered to be adequate for the prescribed purpose. The Act did not require that the consultation prescribed should take place before the making of the draft order or after the passing of the Act, but only that it should take place before the Minister made up his mind on the question of expediency and made his final order. The meetings of the 10th July and the 7th October, 1946, in his (his lordship's) opinion together constituted consultation within the Act. The meeting of the 10th July was not prevented from constituting such a consultation by the fact that the site for the proposed new town had already been chosen by the Minister, inasmuch as the authorities were informed in the letter inviting them to the meeting that the site in question had been chosen, and had at all times opportunity for objecting to the choice of site. The meeting of the 7th October, 1946, was none the less a consultation between the Minister and the authorities, because it took place at the instigation of the latter. The Minister was not absolved from the necessity of consulting a particular authority on the mere ground that the authority had stated that they were not interested in the proposal to designate a site, for, while the Minister could not extract advice if there were a refusal to tender it, it remained his duty to do all in his power to consult with all local authorities appearing to him to be concerned in a proposed site. While a local authority might in a particular case impart the same information while registering objections at a public local inquiry as they would if consulted, the Minister's statutory duty to consult was not performed merely by hearing an authority's objections at the inquiry. The appeal would be dismissed, as there had been consultation as prescribed by s. 1 (1) of the Act, and the Minister had otherwise fulfilled his statutory duties.

COUNSEL: *Capewell,* K.C., and *Rees-Davies,* for the appellants; *The Attorney-General* (Sir Hartley Shawcross, K.C.) and *H. L. Parker,* for the Minister.

SOLICITORS: *Syrett & Sons; Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

MR. C. I. BOWERMAN

Mr. Charles Ivan Bowerman, solicitor, of Walton-on-Thames, Surrey, was drowned while bathing in the sea at Broadstairs on 24th August. He was admitted in 1931.

MR. W. DWYER

The death has taken place at Roscrea, County Tipperary, of Mr. W. Dwyer, solicitor, aged seventy-two. He was one of the oldest practising solicitors in the Irish midlands.

MRS. A. C. MULLEN

Mrs. Agnes Carus Mullen, who was assistant solicitor to the Corporation of Lytham St. Annes, Lancashire, for three years during the war, died recently in Addis Abbaba. She was admitted in 1929.

MR. F. RAMAGE

Mr. Finlay Ramage, S.S.C., J.P., senior partner of Messrs. Steedman, Ramage & Co., Edinburgh, died recently, aged eighty. Admitted in 1900 a member of the Society of Solicitors in the Supreme Court of Scotland, Mr. Ramage, after holding office as Fiscal and then vice-president, was elected president of the Society in 1937.

REVIEW

The Construction of Deeds and Statutes. By Sir CHARLES E. ODGERS, M.A., B.C.L., of the Middle Temple, Barrister-at-Law, late Puisne Judge of the High Court of Judicature at Madras. Second Edition. 1946. London: Sweet & Maxwell, Ltd. 22s. 6d. net (paper boards); 25s. net (cloth).

Here is a students' work which is at the same time ideal as a work of reference. The ground it covers and the detail it provides are vast. A rough calculation from the table of cases shows that some 1,600 cases are dealt with, many of them with statements of the facts and quotations from the judgments. This is a curiously neglected subject in some ways, and a smaller work than the standard work was needed. This is smaller, and it is not too small. It is neither overloaded with examples nor is it a mere set of rules. How many practitioners fully understand and apply the rules of interpretation of statutes? Certainly there are too few, as is shown by the confusion of some lawyers as to the effect of the Furnished Houses (Rent Control) Act, 1946, on the provisions of the Increase of Rent, etc., Restrictions Acts, 1920 to 1939. A study of the rules and cases on implied repeal at p. 245 of this manual sheds considerable light on such problems, and could leave no one in doubt as to the question recently decided in *R.* v. *Paddington and St. Marylebone Rent Tribunal* (*ante*, p. 310), that the standard rent provisions of the earlier Acts are unaffected by the Furnished Houses (Rent Control) Act, 1946. This is only one of many examples of how difficult problems are illuminated. The reviewer may be wrong, but could find no reference either in the text or the index to the rules about inconsistent sections in the same Act. Certainly the case index does not include *Ebbs* v. *Boulnois* (1875), L.R. 10 Ch. 479, or *Wood* v. *Riley* (1867), L.R. 3 C.P. 26. It is a small matter but not unimportant, and can be put right. This text book should prove a welcome addition to the library of every working lawyer.

RULES AND ORDERS

S.R. & O. 1947, No. 1920/L.27

SUPREME COURT, ENGLAND—PROCEDURE

THE RULES OF THE SUPREME COURT (EXCHANGE CONTROL), 1947. DATED SEPTEMBER 1, 1947

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Exchange Control), 1947.

(2) These Rules shall come into operation on the 1st day of October, 1947.

2. Order III (which relates to the indorsement of claim) shall be amended as follows:—

(*a*) The following paragraph shall be added to Rule 4 (which provides that the indorsement shall show the representative capacity of a party), namely:—

"(2) If an action is brought by or on behalf of a person resident outside the scheduled territories, as defined by the Exchange Control Act, 1947,* the indorsement shall so state and shall state the residence of such person."

(*b*) The following Rule shall be substituted for Rule 7 (which prescribes the indorsement on a writ where the claim is liquidated), namely:—

"7. *What is indorsed where the claim is liquidated.*]—(1) Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state that the defendant can pay the amount claimed and costs

(*a*) into court if the plaintiff or one of two or more co-plaintiffs is resident outside the scheduled territories, as defined by the Exchange Control Act, 1947, or is acting by order or on behalf of a person so resident, or if the defendant is making the payment by order or on behalf of a person so resident, or

(*b*) in all other cases to the plaintiff, his solicitor or agent;

and that any such payment must be made within four days after service, or in the case of a writ not for service within the jurisdiction within the time allowed for appearance, and that upon such payment further proceedings will be stayed:

Provided that where the defendant pays the amount into court under this Rule he shall give notice of such payment in to the plaintiff, his solicitor or agent in Form 3A in Part II of Appendix B.

(2) The indorsement for costs required by paragraph (1) of this Rule shall be in Form No. 2 in Appendix A, Part I or in the Form in Appendix A, Part III, Section III.

(3) The defendant may, notwithstanding a payment under this Rule, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation."

* 10 & 11 Geo. 6, c. 14

3. The following Rule shall be added to Order XXII (which relates to payment into and out of court), and shall stand as Rule 22, namely:—

"22. *Payment out of court of money paid in under* 10 *and* 11 *Geo.* 6, *c.* 14.]—In any cause or matter any party may apply for payment out of court of any money paid into court pursuant to the Exchange Control Act, 1947, or under any order of the court made thereunder. The application shall be made by summons in the cause or matter, whatever the amount involved, and shall be served upon all parties interested, and if any person in whose favour an order for payment is sought to be made is resident outside the scheduled territories, as defined by the said Act, or will receive payment by order or on behalf of a person so resident, the summons shall so state, and shall state if the permission of the Treasury authorising the proposed payment has been given unconditionally or on conditions which have been complied with. The permission of the Treasury in writing shall be produced on the hearing of the summons."

4. Order XLII (which relates to execution) shall be amended as follows:—

(*a*) The following paragraphs shall be added to Rule 1 (which provides that a judgment or order is to be obeyed without demand), namely:—

"(2) Where any person is directed by any judgment, order, or award, to pay any money to or for the credit of any person resident outside the scheduled territories, as defined by the Exchange Control Act, 1947, he shall, unless the permission of the Treasury under the said Act has been given unconditionally, or upon conditions which have been complied with, pay such money into court.

(3) Payment into court under the preceding paragraph of this Rule shall, to the extent of the payment, be a good discharge to the person making the payment, and thereafter no steps may be taken to enforce the judgment, order, or award to the extent of the amount paid in notwithstanding the provisions of Rule 3 of this Order or any other Order.

(4) Notice of any payment into court under this Rule shall be given to the plaintiff, his solicitor or agent, and to any other persons specified in the judgment, order, or award, and shall be in Form 3A in Part II of Appendix B subject to such modifications as may be necessary."

(*b*) The following paragraphs shall be added to Rule 12 (which provides for the *praecipe* for a writ of execution):—

"(2) Subject to the provisions of Rule 17 of this Order any party resident, or who is acting by order or on behalf of a person resident, outside the scheduled territories, as defined by the Exchange Control Act, 1947, and who is seeking to issue a writ of *fieri facias* or other process of execution to enforce a judgment or order, shall cause to be endorsed on the *praecipe* for the writ a certificate stating that the Treasury's permission under the said Act has been given unconditionally or on conditions which have been complied with.

(3) The *praecipe* for the writ issued under the preceding paragraph shall be in Form 1A in Appendix G and a certificate under paragraph (2) hereof shall be in Form 1C of the said Appendix.

(4) Where a certificate under paragraph (2) hereof is given, the permission of the Treasury in writing shall be produced to the proper officer at the time of issuing execution."

(*c*) The following paragraphs shall be added to Rule 17 (which determines the time when writs of *fieri facias* and *elegit* may be issued), namely:—

"(2) Notwithstanding the provisions of paragraph (2) of Rule 12 of this Order, a party seeking to issue execution who has not given the certificate prescribed by that paragraph may issue a writ of *fieri facias* or other process directing the sheriff to pay the proceeds of the execution into court.

(3) The *praecipe* for a writ issued under the preceding paragraph shall be in Form 1B in Appendix G.

(4) The form of writ of *fieri facias* issued under paragraph (2) of this Rule shall be in Form 1C in Appendix H.

(5) Notice of any payment into court under this Rule shall be given by the sheriff to the plaintiff, his solicitor or agent and to any other persons specified in the judgment, order, or award, and shall be in Form 3A in Part II of Appendix B subject to such modifications as may be necessary."

5. In Order XLV (which relates to attachment of debts) the following paragraphs shall be added to Rule 3 (which relates to execution against a garnishee):—

"(2) No order absolute shall be made ordering the garnishee to pay any sum to or for the credit of a judgment creditor resident outside the scheduled territories, as defined by the Exchange Control Act, 1947, unless there is produced by the said judgment creditor a certificate that the Treasury's permission under the said Act has been given unconditionally or upon conditions which have been complied with. The said certificate shall be in Form 1C of Appendix G.

(3) If it appears to the court or a judge that payment by the garnishee to the judgment creditor will contravene the provisions of the said Act, the garnishee may be ordered to pay the amount due, together with the costs of the garnishee proceedings into court, subject to deduction of his costs if the court shall so order."

6. In Order XLVIII (which relates to the writ of delivery) Rule 1 shall be amended by the insertion, after the word "plaintiff" in line 4 thereof, of the following:—

" but subject in relation to securities, certificates of title, coupons, and other documents as defined by the Exchange Control Act, 1947, to the provisions of that Act."

7. Order L (which relates to interlocutory orders as to injunctions, etc.), shall be amended as follows :—

(*a*) Rule 8 (which relates to orders for the recovery of specific property other than land, subject to lien) shall be amended by the addition thereto of the following :—

" but subject in relation to certificates of title and coupons and other documents as defined by the Exchange Control Act, 1947, to the provisions of that Act."

(*b*) The following Rule shall be inserted after Rule 17 and shall stand as Rule 17A :—

" 17A. *Payment into court by a receiver pursuant to* 10 & 11 *Geo.* 6, *c.* 14.]—Where it appears to the court or a judge that the judgment creditor is resident outside the scheduled territories, as defined by the Exchange Control Act, 1947, or is acting by order or on behalf of a person so resident and that the permission of the Treasury under the said Act has not been given unconditionally or upon conditions that have been complied with, any order for the appointment of a receiver by way of equitable execution shall direct that the receiver shall pay into court to the credit of the cause or matter in which he is appointed any balance due from him after deduction of his proper salary or allowance."

8. The Forms in the Appendices shall be amended as follows :—

(*a*) Forms Nos. 2, 4, 6 and 8 in Appendix A, Part I, shall be amended by the insertion after the words " will be stayed " of the following :—

" Provided that if it appears from the indorsement of the writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act, 1947, or is acting by order or on behalf of a person so resident, or if the defendant is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into court within the said time and notice of such payment in is given to the plaintiff, his solicitor or agent."

(*b*) the Form of the " Indorsement for Costs " in Appendix A, Part III, Section III shall be amended by the insertion after the words " will be stayed " of the following :—

" Provided that if it appears from the indorsement of the writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act, 1947, or is acting by order or on behalf of a person so resident, or if the defendant is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into court within the said time and notice of such payment in is given to the plaintiff or his solicitor."

(*c*) In Appendix B, Part II, there shall be inserted a new Form to stand as 3A :

No. 3A

NOTICE OF PAYMENT INTO COURT (O.3, r. 7 ; O.42, rr. 1 and 17).

Ledger Credit { }

TAKE NOTICE that the sum of £ : : has been paid into Court pursuant to Order Rule and the Exchange Control Act, 1947, being the amount of £ : : due { to* / from

A† B of

in respect of

the said A† B

being (*a*)* a resident outside the scheduled territories,

or (*b*)* a person acting by order or on behalf of a person resident outside the scheduled territories.

together with* / less* } the sum of £ : : Costs.

Dated 19 (Signature)
Solicitor for†

To

Sheriff

Bank Receipt.

Received the above sum of pounds shillings and pence into court for the above credit.

£ : :

Dated the day of 19 .

BANK OF ENGLAND.

* Delete as required.
† Plaintiff or Defendant.

(*d*) Appendix G of the Rules of the Supreme Court shall be amended by the addition of the following Forms :—

No. 1A

In the High Court of Justice.

Præcipe—Writ of Fieri Facias.
Where Certificate given under the Exchange Control Act, 1947 (Order 42 Rule 12 (2)).

DIVISION. 19 , , No.

BETWEEN

Plaintiff,

and

Defendant.

Seal a Writ of Fieri Facias directed to the Sheriff of
against
of
in the County of
upon a Judgment (*) dated the day of 19
in the sum of £ debt and £ Costs
and interest, &c.

Indorsed to Levy £ and interest thereon at £4† per centum per annum from the day of 19 , and costs of execution.

[Insert here Certificate, Form 1c of this Appendix]

(Solicitor's name)

(Address)

Solicitor for the

Dated this day of 19 .

* " Order " or " Award " sums in Judgment.
† Or interest at the rate agreed on as provided by Ord. XLII., R. 16.

No. 1B

In the High Court of Justice.

Præcipe—Writ of Fieri Facias.
Certificate not given under the Exchange Control Act, 1947 (Order 42, Rule 17 (2)).

DIVISION. 19 , , No.

BETWEEN

Plaintiff,

and

Defendant.

Seal a Writ of Fieri Facias directed to the Sheriff of
against
of
in the County of upon a Judgment
(*) dated the day of 19 , in the
sum of £ debt and £ Costs and
interest, &c.

Indorsed to Levy £ and interest thereon at £4† per centum per annum from the day of 19 , and costs of execution and for payment into Court of the proceeds of execution (less Sheriff's Costs and Charges).

(Solicitor's name)

(Address)

Solicitor for the

Dated this day of 19 .

* Or " Order " or " Award " Sums in Judgment.
† Or interest at the rate agreed on as provided by Ord. XLII., R. 16.

No. 1C

Certificate verifying permission of the Treasury under the Exchange Control Act, 1947

(O.42, r. 12 (3) ; O.45, r. 3 (2))

I certify that the Treasury's permission under the provisions of the Exchange Control Act, 1947, for the payment to* of the proceeds of execution has been given unconditionally *or* upon conditions which have been complied with.

Signed

*

or Solicitors for the *
Address and date.

* Judgment creditor or other description.

(*e*) Appendix H shall be amended by the addition of the following Form to stand as No. 1C :—

No. 1C

In the High Court of Justice.

Writ—Fieri Facias.
For payment into Court where Certificate not given pursuant to O.42 Rule 12 (2) of the Rules of the Supreme Court (O.42 Rule 17 (2)).

DIVISION. 19 , , No.

BETWEEN

Plaintiff.

and

Defendant.

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, to the Sheriff of

Greeting, WE COMMAND YOU that of the goods and chattels of

in your bailiwick you cause to be made the sum of £ and also interest thereon at the rate £ per centum per annum from the (†) day of 19 , which said sum

of money and interest were lately before Us, in Our High Court of Justice, in a certain (‡)
wherein
plaintiff and defendant
by a (§) of Our said Court, bearing date
the day of 19 , (||) to be paid by
the
to
together with certain costs in the said (§) mentioned,
and which costs have been taxed and allowed by one of the Taxing Officers of Our said court at the sum of £
as appears by the certificate of the said Taxing Officer, dated the day of 19 .

And that of the goods and chattels of the said
in your bailiwick you further cause to be made the said sum of (¶) together with interest thereon at the rate of £4 per centum per annum from the (†) day of 19 and that you have that money and interest before Us in Our said Court immediately after the execution hereof and pay the same into Court in pursuance of Rules of Court made under the Exchange Control Act, 1947, and in the manner provided by the Supreme Court Funds Rules: and in what manner you shall have executed this Our Writ, make appear to Us in Our said Court immediately after the execution thereof: And have there then this Writ.

WITNESS,
Lord High Chancellor of Great Britain, the day of
in the year of Our Lord One thousand nine hundred and
LEVY £ and £ for costs of execution, &c.: and also interest on £ at £4 per centum per annum, from the day of 19 , until payment
besides sheriff's poundage, officer's fees, cost of levying, and all other legal incidental expenses.

THIS WRIT was issued by
of
agent for
of
solicitor for the who resides at

The defendant is a
and resides at
in your bailiwick.

* This Writ must be so moulded as to follow the substance of the order or judgment.
† Day of the judgment or order, or day from which money directed to be paid or day from which interest is directed by the order to run, or as the case may be.
‡ Action or matter there depending, intituled "In the matter of, &c.," or as the case may be.
§ "Judgment" or "order."
|| "Adjudged," "awarded," or "ordered."
¶ Amount of costs.

(*f*) The Forms of Garnishee Order (Absolute) in Appendix K shall be amended as follows:—

In Nos. 40 and 40A after the words "pay the said judgment creditor" where they occur in each of the said forms, there shall be inserted the words, "or, if the judgment creditor is resident outside the scheduled territories, as defined by the Exchange Control Act, 1947, or would receive payment of the said sum on behalf of a person so resident, into court, unless the Treasury's permission under the said Act has been given unconditionally or upon conditions which have been complied with."

Dated the 1st day of September, 1947.

Jowitt, C.
Goddard, C.J.
Greene, M.R.
F. James Tucker, L.J.
F. L. C. Hodson, J.
H. B. Vaisey, J.
G. Justin Lynskey, J.
Gerald Gardiner.
Douglas T. Garrett.

1947, No. 1919/L.26

COUNTY COURT, ENGLAND—PROCEDURE

THE COUNTY COURT (EXCHANGE CONTROL) RULES, 1947
DATED SEPTEMBER 1, 1947

1.—(1) These Rules may be cited as the County Court (Exchange Control) Rules, 1947.

(2) An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1936.*

(3) A Form referred to by number in these Rules means the Form so numbered in the Appendices to the County Courts Rules, 1936.

2. In Order XI (which relates to payment into court) the following sub-paragraph shall be added to Rule 10 (which prescribes the circumstances in which payment out of court is not to be made without an order):—

"(*e*) In any action or matter to which Rule 12 of Order XLVI applies."

3. The following Rule shall be added to Order XLVI (which prescribes the procedure to be followed in proceedings under miscellaneous statutes) and shall stand as Rule 12:—

"12.—Where it appears that any person resident outside the scheduled territories, within the meaning of the Exchange Control Act, 1947,† would but for the said Act be entitled to money in court, the money shall not be paid out of court to, or for the credit of such person or to any person acting on his behalf, unless the judge is satisfied that the permission of the Treasury has been given unconditionally, or on conditions that have been complied with."

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 99 of the County Courts Act, 1934,‡ having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

Ernest Hancock.
W. G. Earengey.
Donald Hurst.
B. Ormerod.
J. Alun Pugh.
R. T. Monier-Williams.
Gilbert Hicks.
Roland Marshall.

Approved by the Rule Committee of the Supreme Court.
A. E. A. Napier,
Secretary.

I allow these Rules which shall come into force on the 1st day of October, 1947.

Dated the 1st day of September, 1947.

Jowitt, C.

* S.R. & O. 1936 (No. 626) I, p. 282.

† 10 & 11 Geo. 6, c. 14. ‡ 24 & 25 Geo. 5, c. 53.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 1919. **County Court** (Exchange Control) Rules. September 1.
No. 1942. **Exchange Control** Order. September 5.
No. 1929. **Increase of Pensions** (Calculation of Income) (Amendment) Regulations. September 3.
No. 1930. Increase of Pensions (Extension) Regulations. September 3.
No. 1932. **Meals in Establishments** (Amendment No. 3) Order. September 4.
No. 1944. **Regulation of Payments** (Belgian Monetary Area) Order. September 9.
No. 1920. **Rules of the Supreme Court** (Exchange Control). September 1.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

Mr. A. H. GRAINGER, solicitor to the London Passenger Transport Board, has accepted an invitation to become a member of the London Transport Executive, to be set up soon under the Transport Act, 1947. He was admitted in 1930.

Mr. G. E. C. GREGOR, formerly assistant solicitor, Finchley Borough Council, has been appointed assistant solicitor to the Wembley Corporation.

Notes

The Willesden County Court (Circuit No. 46) is not sitting during September. It is regretted that in our "County Court Calendar" for September the October sittings of the court were printed in error.

The Justices' Clerks Society has elected Mr. E. W. Pettifer, clerk to the justices at Doncaster, as president for the coming year, with Mr. T. D. Whalley, of Bournemouth, as vice-president, and Mr. A. F. Stapleton Cotton, of Epsom, and Mr. B. J. Hartwell, of Southport, as joint honorary secretaries.

Law clerks and typists employed in solicitors' offices in Killarney went on strike on 10th September, after a breakdown in negotiations between the solicitors and representatives of the Irish Union of Distributive Workers and Clerks for increased rates of pay. The strike was settled on the following day, the solicitors having agreed to the increased wages demands of the employees.

The Solicitors' Managing Clerks' Association has arranged a series of four lectures on the Town and Country Planning Act, 1947, to be delivered by Mr. D. P. Kerrigan, Barrister-at-Law, in the Old Hall, Lincoln's Inn, W.C.2, at 6.15 p.m., commencing on Tuesday, 14th October, 1947, and continuing for the following three Tuesdays. Members of the Association may obtain a ticket of admission on application to the Hon. Secretary. Admission is open to others upon payment of a fee of £1 1s. for the series.